

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

NICHOLAS GULLI,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 2:20-cv-01231-ART-NJK

Order Granting Motion to Dismiss

(ECF No. 47)

Before the Court is the Government's renewed motion to dismiss Plaintiff Nicholas Gulli's complaint for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). The Court issues this order to supplement and memorialize its ruling from the bench on July 17, 2025.

**I. Background**

Plaintiff Nicholas Gulli, a former Las Vegas Metropolitan Police Department (LVMPD) Officer, was part of the joint state-federal Southern Nevada Heroin Task Force. (ECF No. 1; ECF No. 47-2 at 3.) During a 2015 "buy bust" operation, Gulli, while undercover, was following a suspect who had just sold heroin to an undercover detective. (ECF No. 47-2 at 4.) A DEA agent rammed into Gulli's unmarked car, injuring him. (*Id.* at 5.) Gulli sued the United States and the DEA agent under the Federal Tort Claims Act (FTCA) several years later, after retiring from LVMPD.

The Government moved to dismiss Gulli's claim for lack of jurisdiction, arguing that Gulli has a colorable Federal Employees' Compensation Act (FECA) claim. (ECF No. 29.) This Court denied the Government's motion without prejudice and stayed the case so that Gulli could apply to the Department of Labor to verify that the injury was covered by FECA. (ECF No. 35.) Gulli applied for FECA in August 2023, but he did not respond to the Department of Labor's

1 requests for evidence to support his claim. (See ECF Nos. 47-5, 47-6.) Gulli's  
2 claim was subsequently denied for lack of evidence. (See ECF No. 47-6.)

## 3 **II. Standard of Review**

4 In resolving a motion to dismiss under Rule 12(b)(1), the Court "is not  
5 restricted to the face of the pleadings" and may rely on extrinsic evidence to  
6 resolve factual disputes relevant to subject matter jurisdiction. *McCarthy v.*  
7 *United States*, 850 F.2d 558, 560 (9th Cir. 1988). A party opposing a factual  
8 motion to dismiss for lack of subject matter jurisdiction may then "present  
9 affidavits or any other evidence necessary to satisfy its burden of establishing  
10 that the court, in fact, possesses subject matter jurisdiction." *Colwell v. Dep't of*  
11 *Health & Hum. Servs.*, 558 F.3d 1112, 1121 (9th Cir. 2009) (citing *St. Clair v. City*  
12 *of Chico*, 880 F.2d 199, 201 (9th Cir.1989)) (internal quotations omitted).

## 13 **III. Analysis**

14 "If a plaintiff has a colorable claim under FECA, the federal courts should  
15 dismiss any action arising under the same facts for lack of subject matter  
16 jurisdiction." *Moe v. United States*, 326 F.3d 1065, 1068 (9th Cir. 2003). FECA  
17 applies to state and local law enforcement officers who are injured while  
18 apprehending or attempting to apprehend a person who committed or is  
19 committing a federal crime. 5 U.S.C. § 8191; *City of Whittier v. U.S. Dep't of Just.*,  
20 598 F.2d 561, 563 (9th Cir. 1979) (FECA "exclusive remedy for injuries suffered  
21 by [local officer injured by drug-enforcement federal agent] while participating in  
22 federal law enforcement activities"); *Buehler v. United States*, No. C-96-1391-  
23 MHP-ENE, 1996 WL 511645 at \*3-4 (N.D. Cal. Aug. 8, 1996) (local police officer  
24 injured while driving with DEA agent during drug investigation has colorable  
25 FECA claim under § 8191 and cannot sue under FTCA); *Aponte v. Dep't of*  
26 *Treasury, Bureau of Alcohol, Tobacco, & Firearms*, 940 F. Supp. 898, 899  
27 (E.D.N.C. 1996) (FECA under § 8191 exclusive remedy for local police officer shot  
28 by federal agent while serving as translator for drug bust).

1 Gulli was injured by a DEA agent while working in the joint state-federal  
2 operation to apprehend a heroin seller for selling heroin. He has a colorable FECA  
3 claim under 5 U.S.C. § 8191. The Court must therefore dismiss this case for lack  
4 of subject matter jurisdiction.

5 **IV. Conclusion**

6 Accordingly, the Court grants the Government's Motion to Dismiss (ECF  
7 No. 47) and dismisses the case without prejudice and without leave to amend.

8 The Court instructs the Clerk to close the case.

9  
10 Dated this 18th day of July 2025.

11  
12  
13 

14 ANNE R. TRAUM  
15 UNITED STATES DISTRICT JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28